

REMARKS§112 Rejections

The Examiner has rejected claims 22, 23, 26 and 28-30 as being indefinite under §112 paragraph 2. Applicant has made minor amendments to claims 23, 26 and 28 that should address the Examiner's antecedent basis concerns.

Claim 22 references "the bottle support area oriented at a corner of the floor member." As the Examiner points out, this could reference any of the corners of the floor member. This claim is not indefinite because the scope of the claim, although broad, can be readily ascertained, i.e. any of the corners. The rejection of claim 22 should be withdrawn.

Rejection Under §102 over Apps '461 and Apps '572

The Examiner has rejected claims 8-16 and 23-25 as anticipated by Apps '461 (US 5,651,461) and Apps '572 (US 5,842,572). Neither reference shows columns in the end walls that have an interior surface having a pair of opposed surfaces meeting at a centrally disposed surface which defines a second plane offset from a first plane defined by an inner surface of an interior projection on a band, as recited by claim 8. Therefore, claim 8 is not anticipated by Apps '461 or Apps '572.

Neither reference shows "a lower wall portion disposed along a plane offset inwardly from the projection members," as recited by claim 23, or "a lower wall structure inwardly offset from the upper wall member," as recited by claims 24 and 25<sup>1</sup>. Rather, in both references, what the Examiner calls the "lower wall portion/structure" is in the same, angled plane as what the Examiner calls the "projection member" or "upper wall member." Therefore, claims 23-25 are not anticipated by Apps '461 or Apps '572.

Rejection Under §102 over Apps '748

The Examiner has rejected claims 23 and 25-30 as anticipated by Apps '748 (US 5,184,748). First, Apps '748 does not have "a lower wall portion disposed along a plane offset inwardly from the projection members," as recited by claim 23, or "a lower wall structure

<sup>1</sup> Applicant's amendments to claims 23 and 24 are for the purpose of maintaining consistency in the use of some terms. No change to claim scope is intended.

inwardly offset from the upper wall member," as recited by claim 25. Rather, in Apps '748, what the Examiner calls the "lower wall portion/structure" is in the same, angled plane (middle face 140) as what the Examiner calls the "projection member" or "upper wall member." Therefore, claims 23 and 25 are not anticipated by Apps '748.

With respect to claim 26, what the Examiner is calling the claimed "second outer surface" is not "recessed relative to" what the Examiner calls "the first outer surface." Therefore, claim 26 is not anticipated by Apps '748.

For claim 27, what the Examiner calls the "first outer surface portions" are not "defined by a generally flat planar surface." Therefore, claim 27 is not anticipated by Apps '748.

What the Examiner calls the "first outer surface portions" are not "defined by a generally flat planar surface," as recited by claim 28. Nor is the outer surface of the end walls "generally planar and flat thereacross," as recited by claim 28. Therefore, claim 28 is not anticipated by Apps '748.

#### Rejection Under §102 over Kalin

The Examiner has rejected claims 31-32 as anticipated by Kalin (Des. 361,663). Kalin does not disclose columns that extend from interior projections of what the Examiner calls "an upper wall portion." This is particularly true with respect to the end walls of Kalin. Claim 31 recites that the "upper portion" includes the handle area defined by the upper handle member and the lower handle member. This further emphasizes that there are no columns in the end wall of Kalin that extend inwardly from an interior projection of the "upper wall portion," as claimed. Therefore, Kalin does not anticipate claims 31-32.

#### Rejection Under §103 over Apps '461, Apps '572, Kalin and Hammett

The Examiner has rejected claims 1-7 as obvious over Apps '461, Apps '572, Kalin and Hammett (US 5,421,477) by arguing that it would be "obvious to modify the bar handle [of Apps '461 and Apps '572] to be a handle opening in the end walls of the upper band in order to provide the convenience of inserting a hand to grasp a crate as opposed to the gripping of a bar." This proposed motivation is not found in any of these references.

In fact, it is contrary to the teaching of Apps '461 and '572 to change the bar handle to a handle opening. Apps '461 and '572 suggest that it is necessary to maintain "a generally open area" below the handle in order to provide the ability to grasp the handle in the two orientations shown in Figures 13 and 14. (See for example, Apps '572, col. 8, lines 43-59.) One would expect that changing the bar handle to a handle opening would interfere with the "generally open area" and the ability to grasp handle in the two orientations. It would not be obvious to modify the case in such a manner, contrary to the teachings of these references.

Additionally, because neither Kalin nor Hammett show a column member from the lower handle member to the floor portion, as recited by claim 1, even the crate modified as proposed by the Examiner would not meet the terms of claim 1. Therefore, claims 1-7 are not obvious.

Rejection Under §103 over Apps '748 and Koefelda '843

The Examiner has rejected claims 17-22 as obvious over Apps '748 in view of Koefelda (US 5,465,843). The Examiner has not even proposed motivation for modifying the tray of Apps '748 to include a ledge as shown in Koefelda. In Apps '748, the band of one tray supports the band of a tray nested thereon. Therefore, there is no reason (and no motivation) to add a ledge to Apps '748. There is no motivation in Koefelda or Apps '748 to modify the case of Apps '748 to include a ledge. Therefore, claim 17 is not obvious over Koefelda and Apps '748.

Jan-28-04 06:30pm From:REHRIG PACIFIC CO LA

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T-090 P.016/016 F-944

Serial No. 09/977,636  
Attorney Docket No: RPC 0554 PUS

CONCLUSION

Reconsideration is requested. If the Examiner maintains his rejection of the claims, entry of this Amendment is requested in order to simplify the issues on Appeal.

It is believed that no fees are due. However, if any fees or extensions are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,



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Dated: January 28, 2004